

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	CASE NO. 1:02CR-54
Plaintiff,	:	(Judge Bunning)
	:	
vs.	:	
	:	
WALTER PUGH,	:	<u>MOTION IN LIMINE</u>
Defendant.	:	

NOW COMES the Defendant, Walter Pugh, by and through his undersigned attorney, and moves this Honorable Court to enter an order preventing the Prosecution from eliciting information or evidence of firearm or ammunition possession in this case. The evidence is not probative of any issue before the court and only serves to prejudice Walter Pugh's right to a fair trial as guaranteed by the United States Constitution.

MEMORANDUM IN SUPPORT

The Defendants in this case are charged with offenses relating to a bank robbery that occurred on April 24, 2002. In addition, the defendants are alleged to have possessed weapons during the robbery.

This matter was tried before a jury in September of 2002. After a successful appeal, the offenses were remanded for a new trial.¹

Witnesses in the bank during the robbery describe one offender possessing a handgun, the other a shotgun with a brown handle. The Government alleges Walter Pugh is the man

¹ Mr. Tyreese Pugh was also charged and convicted of being a felon in possession of a weapon. The date of offense was May 7, 2002. Mr. Tyreese Pugh was convicted of the offense and the conviction was affirmed on appeal. The offense is not before this court.

possessing the handgun during the robbery, and Tyreese Pugh as possessing the shotgun. During the trial, no one ever identified a specific weapon as being part of the robbery.

In the earlier trial, the Government presented evidence of Tyreese Pugh being in possession of a shotgun when he was arrested. This gun was never identified as being part of the robbery of the bank. This shotgun is missing its handle.

Additionally, the Government presented testimony regarding a search of a car allegedly driven by Walter Pugh. Guns and ammunition were found in the car. None of this evidence was ever identified as being involved in the robbery of the bank.

Further, the Government presented the testimony of Shannell Holston, a woman who claimed to know Walter Pugh. Ms. Holston was asked if she had ever seen Walter Pugh in possession of weapons. Additionally, Ms. Holston was asked if she ever saw Walter Pugh in possession of the shotgun recovered from Tyreese Pugh. Ms. Holtston stated she had. In addition, Ms. Holston testified that she had seen Walter Pugh shoot the shotgun and remove its black handle. The removal of the handle occurred over a month before the robbery occurred.

It is clear from the testimony of the Government's witnesses and the pictures that the shotgun involved in the bank robbery had a wooden stock handle. The shotgun recovered from Tyreese Pugh is not the same gun. The shotgun allegedly fired by Walter Pugh is not the gun involved in the bank robbery. The shotgun with the black stock removed a month before the robbery is not the same gun involved in the bank robbery.

Any reference to the guns or ammunition recovered in this case has not been identified as being connected to the offenses in this case. They are not relevant. The

prejudicial effect of referring to them significantly outweighs any limited probative value the Government might claim. Reference to shooting off a shotgun or removing its stock only suggests unrelated and irrelevant criminal conduct not permitted by Evidence Rule 403 or 404.

WHEREFORE, Walter Pugh respectfully requests this Court enter an order preventing the Government from mentioning or eliciting any evidence or information about any firearm or ammunition not identified by someone as being related to the bank robbery in this matter.

Respectfully submitted,
S/William R. Gallagher
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2005 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Amul Thapar, Assistant U.S. Attorney.

S/William R. Gallagher
WILLIAM R. GALLAGHER